

Josh Long

From: Steve Schlather
Sent: Tuesday, January 24, 2012 3:10 PM
To: Marrku Kauppinen; Margie Roesner
Cc: John Edmonds; Josh Long; Marshall Werner
Subject: FW: TTI v. EDNA

Markku,

Below is our response to Scott's letter.

Let me know if you have any questions.

----- Forwarded Message

From: Steve Schlather <sschlather@cepiplaw.com>
Date: Tue, 24 Jan 2012 16:08:51 -0500
To: "R. Scott Johnson" <scott.johnson@ipmvs.com>
Cc: !DeptLitigation <DeptLitigation@ipmvs.com>, "Edmund J. Sease" <ed.sease@ipmvs.com>, "Brad J. Powers" <brad.powers@ipmvs.com>, "Wilson, Mike" <mikewilson@fulbright.com>
Subject: Re: TTI v. EDNA

Scott,

As an initial matter, the parties did confer and agree on a plan to address our discovery differences. TTI agreed to produce Mr. Whitlow for deposition on February 2nd and both sides agreed to extend the discovery deadline until February 15th to allow TTI to take discovery from EDI. TTI has now back-tracked on that agreement.

In addition, and as we have made abundantly clear, EDNA has no control over EDI. Therefore, your continued attempts to suggest that EDNA has anything to do with the timing or occurrence of the deposition of EDI in Finland is simply false.

As we have stated before, EDNA remains willing to make reasonable accommodations for TTI's belated discovery efforts in Finland. However, we cannot agree to leave discovery open indefinitely, including because it likely postpones a resolution of infringement via summary judgment. While you have proposed moving the deadline for dispositive motions back to April 13th (only two weeks before the parties pre-trial filings are due), you have not provided any assurance that the discovery will be completed by that time. At some point before trial, discovery in this case must close.

As it is, your proposal puts significant burden on both the parties and the Court to deal with dispositive motions and a myriad of pre-trial deadlines in only two weeks, as opposed to the 10 weeks in the current schedule. Further, under your proposal, briefing for dispositive motions would not even be complete until the very eve of trial.

Further, nothing that TTI learns from EDI in Finland will change the incontrovertible fact that EDNA cannot possibly infringe the '372 patent because the acts accused of infringement occur in Finland,

which is outside the reach of U.S. patent laws. It thus appears that TTI is merely using Letters of Request in this case as a vehicle to obtain discovery in TTI's case against EDI, and that TTI is struggling to keep discovery open in this case to that end. With expert reports complete, we have reached a point that discovery in this case should soon close so that EDI's meritless claims against EDNA can be dismissed by summary judgment. Had EDI done a reasonable pre-suit investigation, it would have never sued EDNA in the first place. Further, TTI should have dropped its claims against EDNA when the evidence in this case made it plainly apparent that the acts accused of infringement occur in Finland.

TTI has known, or should have known, about EDI's involvement with the accused products since before it filed this case. At a minimum, it has been aware of EDI's involvement since at least June. Nonetheless, it was not until five months later that TTI even sought discovery from EDI. EDNA is not willing to agree to extend the discovery deadline indefinitely for discovery that should have been taken months ago.

Finally, the parties have already agreed to extend the discovery deadline for purposes of the Whitlow deposition. In addition, Brad has indicated that Mr. Whitlow is available on February 2nd in Scottsdale. EDNA has noticed Mr. Whitlow's deposition for that date and location. We look forward to seeing you there.

Best Regards,

Steve Schlather

CEPIP

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From: "R. Scott Johnson" <scott.johnson@ipmvs.com>

Date: Tue, 24 Jan 2012 12:49:53 -0500

To: Steve Schlather <sschlather@cepiplaw.com>

Cc: !DeptLitigation <DeptLitigation@ipmvs.com>, "Edmund J. Sease" <ed.sease@ipmvs.com>, "Brad J. Powers" <brad.powers@ipmvs.com>, "Wilson, Mike" <mikewilson@fulbright.com>

Subject: TTI v. EDNA

Steve,

Please see the attached correspondence.

-Scott

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